

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 562 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBEN GIRISHBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR JB PARDIWALA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on December 16, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Smt. Madhuben, wife of Girishbhai Premabhai

Patel of Surat, under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the detenu and statements of two anonymous witnesses for forming an opinion that the detenu is a bootlegger. The detaining authority observed in the grounds of detention that the fear expressed by the anonymous witnesses qua the detenu is correct and genuine and, therefore, the identity of the witnesses is required to be not disclosed in exercise of powers under Section 9(2) of the PASA Act. After considering possibility of resorting to less drastic remedies under ordinary laws, the detaining authority observed that in order that the detenu is immediately prevented from pursuing her anti-social activities, she is required to be detained under the PASA Act.

3. The detenu challenges the order of detention on various grounds. However, learned advocate, Mr. Pardiwala, appearing for the petitioner has placed reliance on the ground of non-consideration/communication of the representation/ result of representation made on behalf of the detenu. According to Mr. Pardiwala, the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution is, therefore, infringed and the continued detention of the detenu, therefore, is rendered bad in law.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, it may be noted that the petitioner had raised a specific contention by making an amendment in the petition supported by a statement of oath. The contention in paragraph 10(A) of the petition runs as under :-

"10(A) It is most respectfully stated and submitted that the petitioner detenu had preferred a representation dated 25.1.2000 addressed to the Home Minister, State of Gujarat, New Sachivalaya, Gandhinagar. The said representation was sent by a Registered Post A.D. to the Jail Superintendent, Vadodara Central Prison, Vadodara requesting the Jail Superintendent to take the signature of the detenu on the representation and forward the same by Speed Post at the earliest. It is submitted that till this date the petitioner detenu has not been communicated by the State Government about

the disposal of the representation addressed to the Home Minister, State of Gujarat. It is not known as to how the representation addressed to the Home Minister has been dealt with and disposed off and there is no communication of any nature till this date to the detenu in the jail, where the detenu has been detained...."

This Contention of the petitioner on oath has remained uncontroverted by the other side, as no affidavit in reply is filed. There is no reason to disbelieve the statement on oath made on behalf of the detenu. Learned Assistant Government Pleader, Mr. Dave, is also not in a position to indicate from his file that the communication has, in fact, been communicated to the detenu. All that he could say was that the communication has been sent to the Jail Authorities for being communicated to the detenu. Respondent No.3, the Jail Superintendent, has also not controverted the contention raised by the petitioner. Non-communication of the decision of the representation results into infringement of right of the detenu of making an effective representation. The continued detention, therefore, is rendered bad in law in the eye of law. The petition deserves to be allowed on this count.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated December 16, 1999, passed against the detenu is hereby quashed. The detenu-Smt.Madhuben, wife of Girishbhai Premabhai Patel, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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